

18.5.2022
Court No. 19
Item no.06
CP

WPA No. 8116 of 2022

Chandan Majumdar & anr.

Vs.

The Howrah Municipal Corporation & ors.

Mr. Abhratosh Mazumdar, Sr. Advocate

Mr. Sayan Sinha

Mr. Steven Souradip Biswas

....for the petitioners.

Mr. Sandipan Banerjee

Mr. Ankit Surekha

Ms. Kalpita Paul

....for the H.M.C.

Mr. Debjit Mukherjee

Ms. Utsa Dutta

....for the respondent no. 10.

Mr. Lalit Mohan Mahata, Ld. Addl. Govt. Pleader

Mr. Prssanta Behari Mahata

....for the State.

Mr. Atarup Banerjee

Mr. Mrityunjoy Chatterjee

Md. G. N. Imrohi

Ms. D. Majumder

.....for the added respondent.

The petitioner is aggrieved by an order dated April 27, 2022, passed by the Assistant Engineer in Charge of Building Department, Howrah Municipal Corporation. The said order is an order of demolition. The order of demolition has been issued pursuant to a direction of this court. Such direction was issued by the court in WPA 2107 of 2022 dated February

21, 2022. The operative portion of the said order is as follows:

“Needless to mention that the Commissioner shall follow the procedure, laid down hereinbelow:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondents 10 and 11.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondents 10 and 11.
- d) A hearing shall be given to the petitioner and the respondents 10 and 11. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority.
- e) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently.”

The order of this court was passed on the earlier occasion, when a similar order of demolition had been challenged and the court found that there were disputes with regard to delivery of the hearing notice upon the person responsible. Violation of the principles of natural justice had also been detected. Thereafter, while disposing of WPA 2107 of 2022, the court laid down the method by which the issue should be decided de novo. The court had also

directed that Sri Amar Kumar Sonkar who was the complainant before the corporation and Sri Ram Krishna Pal who was the land owner, should also be heard by the corporation.

The order of demolition has been assailed on the following grounds:

- a) The procedure which had been laid down by the court was not followed.
- b) Inspection was not held.
- c) Report of inspection was not prepared.
- d) The order was a cyclostyled format, which did not disclose the nature and extent of deviation upto the G + 4 level.
- e) The factum of admission as recorded by the officer in the said order, was erroneous.

This court finds that the date of hearing as referred to in the order, is December 9, 2019. Admittedly the order of this court was passed on February 21, 2022. Such order and direction have been completely overlooked.

Mr. Atarup Banerjee, learned advocate, who seeks to intervene on behalf of Amar Kumar Sonkar, the original complainant, submits that even the said complainant was not heard by the corporation.

Mr. Banerjee, learned advocate appearing on behalf of the corporation, submits that the petitioners are not entitled to any further

consideration in view of the rampant unauthorized construction. A G+9 storeyed building has been constructed, whereas, the petitioners only had a sanction for construction of G+4 storeyed building.

There is no quarrel with the proposition that an unauthorized construction cannot be allowed to continue indefinitely. A coordinate bench of this court had directed the corporation to proceed in accordance with law. Law empowers the corporation also to proceed in accordance with law against any unauthorized construction. The only issue which is subject to judicial review in this case, is whether the corporation had exercised its jurisdiction in accordance with law, upon complying with the principles of natural justice or whether the order has been passed arbitrarily and without considering the materials on record.

Admittedly, the order has been passed on the basis of a hearing which was held on December 9, 2019. Although this court had issued specific directions upon the corporation to consider the issues afresh by holding a de novo hearing, the same has not been done. The court had also prescribed the method to be followed so that the order impugned would reflect the details and extent of unauthorized construction and the submissions of all the interested parties and stake holders would be

available before the authority designated to pass the order. The court had further directed that in this special facts and circumstances, the municipal commissioner should hear out the matter and pass an order. The order impugned cannot be sustained in law for the following reasons:

- a) The direction of this court dated February 21, 2022 has not been followed.
- b) The order impugned is a cyclostyled copy where only floors have been mentioned.
- c) Fresh hearing upon holding an inspection was not done.
- d) The complainant and the land owner were not heard.
- e) The entire order of this court passed on an earlier occasion has been given a complete go by. The order suffers from non-application of mind.

The court is of the opinion that the deviation as detected upto G+4 level should have been mentioned in the order to apprise the person responsible as to the extent and the nature of the demolition which should be undertaken by him upto the G+4 level. Opportunity of being heard means a reasonable opportunity and in this case such opportunity was not granted. Evidence was not

allowed to be produced and, as such, the order impugned is set aside.

The writ petition is disposed of with a direction upon the Municipal Commissioner to hear out the matter as directed by the court in the order dated February 21, 2022 which has been set out hereinabove. The inspection of the site shall be held by any authorized engineer.

As there are serious deviations, no further construction or alienation of the property or portions thereof, will be permitted till the disposal of the issue.

It is made clear that the original complainant, namely, Sri Amar Kumar Sonkar, and any other interested persons must be heard and allowed to be present at the inspection. The notices shall be affixed at conspicuous places at the premises where the construction has been made and the same shall serve as a notice to all.

With the above observations, the writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)